

### **REMARKS**

Claims 1-14 and 24-27 are now pending in the application (Claims 15-23 have been withdrawn from consideration). Claim 2 has been rewritten in independent form to address the claim objection under 37 CFR. 1.75(c). Each of Claims 1, 2 and 14, the independent claims, has been amended herein. Dependent Claims 26-27 have been added.

#### **Rejections Under 35 USC 102(e) and 103(a)**

Claims 1-8, 10-14, 24 and 25 were rejected under 35 USC 102(e) as being anticipated by newly-cited US Patent 6,389,473 (Carmel et al.) and Claim 5 was rejected under 35 USC 103(a) as being unpatentable over Carmel in view of US Patent 6,920,110 (Roberts et al.). Each of these rejections is respectfully traversed and reconsideration is requested.

Independent Claim 1, as amended herein, is directed to a method for synchronously transferring an amount of local data from a local data storage medium to a remote data storage medium via a communications link having an available bandwidth, the local data storage medium associated with a local computer system having a local processor sequentially responsive to a plurality of local computer programs, the remote data storage medium associated with a remote computer system non-redundant of the local computer system and having a remote processor, the method including evaluating local user conditions associated with transfer of the local data, based on the currently available bandwidth and the amount of local data, approximating a transfer time for the local data, determining a status of the local processor, wherein the determining step includes determining if the local processor has reduced activity or is idle, based on the approximated transfer time, the local user conditions, and the status of the local processor, selecting a time *of day at which* to transmit the local data to the remote data storage medium, and automatically arranging transfer of the local data to the remote data storage medium via the communications link at the selected time *of day*.

Independent Claim 14 is an apparatus claim corresponding to method Claim 1, and, as amended herein, specifically is directed to an apparatus for synchronously transferring an amount of local data from a local data storage medium to a remote data storage medium...., the apparatus including a computer-readable storage medium and a processor responsive to the computer-readable storage medium and to a computer program, the computer program, when loaded into the processor, operative to perform a method including evaluating local user conditions associated with transfer of the local data, based on the currently available bandwidth and the amount of local data, approximating a transfer time for the local data, determining a status of the local processor, wherein the determining step includes determining if the local processor has reduced activity or is idle, based on the approximated transfer time, the local user conditions, and the status of the local processor, selecting a time *of day at which* to transmit the local data to the remote data storage medium, and automatically arranging transfer of the local data to the remote data storage medium via the communications link at the selected time *of day*.

As explained in paragraph [0005] of Applicants' specification, as filed, a "typical local PC client has a single processor under independent control, and a limited bandwidth communication link to any remote data storage medium" – the "local PC may be unable to concurrently perform multiple processing-intensive tasks, such as transferring large data files and running unrelated user applications, and/or data transfers may be slow".

Applicants' proposed method takes these facts into account, by determining if a local processor is idle or has reduced activity, and using that determination (*in addition to the local user conditions* and the approximated time for transfer) *to select a time of day at which to* transmit the local data to the remote storage device.

As further explained at paragraph [0029], "the *user may specify conditions* associated with selection of user data 25, such as, among other conditions: where the data is located; file extensions associated with the data; *times, or events, which would trigger transfer of the data*; or any combination thereof...the user may request that user data 25 having file extensions such as .DOC or .JPG be *transferred immediately*, while user data 25 have file extensions such as .MPG or .RM be *transferred overnight*".

Carmel is directed to a method for “real –time broadcasting from a transmitting computer to one or more client computers – including ‘providing at the transmitting computer a data stream having a given data rate, and dividing the stream into a sequence of *slices*, each slice having a predetermined data size associated therewith”.

In Carmel, “data stream 40 comprises a series of data *slices* 42, 44, 46, 48, etc....each slice contains a segment of video and/or audio data, corresponding to a respective, successive time interval labeled T<sub>1</sub>, T<sub>2</sub>, T<sub>3</sub>, etc.” (Col. 7, lines 23-25). In addition “time intervals T<sub>1</sub>, T<sub>2</sub>, T<sub>3</sub>, etc are not all equal, but rather are adjusted by computer 34 in response to the transmission rate” (Col. 7, lines 42-45). These “time intervals” are simply time slots, each of which contain a data slice 42, 44, 46, 48, etc. Although these time intervals T<sub>1</sub>, T<sub>2</sub>, T<sub>3</sub>, etc, may be ‘adjusted by computer 34 in response to the transmission rate’ (col. 7, lines 35-49, cited in the Action page 7, lines 1-3), they do not teach (or even suggest) a method that “selects *a time of day* at which to transmit local data to the remote data storage medium, and automatically arranges transfer of the local data to the remote data storage medium via the communications link at the selected *time of day*.”

Carmel does not teach, or suggest in any way, a method that, based on the approximated transfer time, *the local user conditions*, and the status of the local processor, *selects a time of day* at which to transmit the local data to the remote data storage medium, and automatically arranges transfer of the local data to the remote data storage medium via the communications link at the selected time of day.

For at least the foregoing reason, Applicants respectfully submit that each of independent Claims 1, 2 and 14, as amended herein, is patentable over Carmel.

Dependent Claims 3-13 and 24-27 are also believed to be clearly patentable over the art of record for all of the reasons indicated above with respect to Claim 1 or 2, one or the other from which they depend, and even further distinguish over the cited references by reciting additional limitations. Dependent Claims 26 and 27 have been added herein and are believed clearly patentable over Carmel and the other art of record. Dependent Claim 26 further recites that the local user conditions comprise file extensions of the local data and dependent Claim 27 recites that the “local data having a first file extension is transferred immediately and local data having a second file extension is transferred at a later time of day”.

Should the Examiner be of the view that an interview would expedite consideration of this Amendment, or of the application at large, request is made that the Examiner telephone the Applicants' undersigned attorney at (908) 518-7700 in order that any outstanding issues be resolved.

Respectfully submitted,

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